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22 UNITED STATES DISTRICT COURT FOR THE
23 EASTERN DISTRICT OF CALIFORNIA
24 SACRAMENTO DIVISION

25 UNITED STATES OF AMERICA,

26 Plaintiff,

27 v.

28 ATLANTIC RICHFIELD COMPANY,

Defendant.

CIV. NO.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the United States Department of Agriculture, Forest Service ("Forest Service"), has filed a complaint in this matter concurrently herewith, pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9604, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by the Forest Service at the Walker Tailings Site located in the Plumas National Forest, Plumas County, California ("Site"), together with accrued interest; and (2) performance of studies and response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. This Consent Decree is entered into under the authority vested in the President of the United States by Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622. The President's authority relative to this Site was delegated to the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 23, 1987). The Secretary's authority was further delegated to the Chief of the Forest Service ("Chief") by 7 C.F.R. 23 § 2.60(a)(39). The Chief redelegated the Secretary's authority to enter into this Consent Decree to the Forest Service Region 5. Regional Forester ("Regional Forester") by letter dated April 14, 1997. The Chief redelegated the Secretary's authority to issue a Record of Decision under CERCLA to the Regional Forester by Forest Service Manual Region 5 2164.04, 2b, effective November 10, 1994. The Regional Forester redelegated the Secretary's authority to issue a Record of Decision under CERCLA to the Forest Service Region 5 Director of Engineering by Forest Service Manual – Region 5 Supplement 2164.04c-2b.

D. The Site is located within Pacific Southwest Region 5, Plumas National Forest, Plumas County, California. The Plumas National Forest is under the administrative jurisdiction of the Forest Service.

E. The defendant does not admit any liability to the plaintiff arising out of the transactions or occurrences alleged in the complaint.

1 F. The Site was a tailings reservoir for mine and mill tailings from the Walker Mine,
2 located on private lands nearby. Plaintiff alleges that the Walker Mine was owned and operated
3 by the Walker Mining Company ("Walker") from approximately 1915 through 1941. Plaintiff
4 further alleges that the Walker Mine was also operated concurrently by the International
5 Smelting Company and the International Smelting and Refining Company (collectively
6 "International") and their parent corporation, the Anaconda Copper Mining Company, which
7 subsequently changed its name to The Anaconda Company (collectively "Anaconda"), during
8 most or all of its period of operation. Plaintiff further alleges that tailings, as well as acid mine
9 drainage, both of which contain hazardous substances, were released from the Walker Mine onto
10 the Site during the time that the Walker Mine was operated by Walker and International, and that
11 hazardous substances contained in the tailings on the Site and acid mine drainage from the
12 Walker Mine continue to be released from the Site today.

13 G. After the Walker Mine closed, International merged into Anaconda, and
14 Anaconda merged into Atlantic Richfield Company ("Atlantic Richfield"). Settling Defendants
15 deny that International, Anaconda or Atlantic Richfield engaged in any act or omission that
16 would make them liable for hazardous substances released at or from the Walker Mine or the
17 Site.

18 H. In 1990, in response to a release or a substantial threat of a release of one or more
19 hazardous substances at or from the Site, the Forest Service commenced a Remedial
20 Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

21 I. The Forest Service completed a Remedial Investigation ("RI") Report and a
22 Feasibility Study ("FS") Report for the Site in August 1993.

23 J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the Forest Service
24 published notice of the completion of the FS and of the proposed plan for remedial action, on
25 September 17, 1993 and February 24, 1993, in major local newspapers of general circulation.
26 The Forest Service provided an opportunity for written and oral comments from the State of
27 California ("State") and the public on the proposed plan for remedial action. A copy of the
28

1 transcript of the public meeting is available to the public as part of the administrative record
2 upon which the Regional Forester based the selection of the response action.

3 K. The decision by the Forest Service on the remedial action to be implemented at
4 the Site is embodied in a final Record of Decision ("ROD"), executed on June 10, 1994, and
5 amended on August 2, 2001. The State of California was given an opportunity to review and
6 comment on the ROD and amended ROD and has concurred in the proposed remedial actions.

7 L. The ROD selected the following preferred remedial alternative: treatment of the
8 tailings material on-site, reconstruction of a portion of the Dolly Creek channel to stabilize it and
9 revegetate its banks, construction of aerobic and anaerobic wetlands to act as a passive water
10 treatment system to reduce the metals content of contaminated waters, construction of wind
11 barriers to control erosion and air releases, and neutralization of 10 acres of tailings and
12 revegetation of 60 acres of tailings to reduce acidity. The amended ROD added the diversion of
13 Dolly Creek around the tailings to ensure the effectiveness of the wetland treatment system and
14 reduce releases of hazardous substances during heavy flows. The amended ROD also
15 contemplates the possible construction of a 15-acre passive water treatment system and the
16 diversion of Little Grizzly Creek as contingent remedial actions, to be implemented as needed.

17 M. Following issuance of the original ROD, the Forest Service completed
18 construction of the aerobic wetland portion of the remedial action, using its own funding,
19 together with other work to reduce erosion and wind dispersion of the tailings. To date, the
20 Forest Service alleges that it has expended approximately \$1.24 million in response costs for Site
21 investigation and engineering studies, construction of the aerobic wetlands and other work, and
22 enforcement activities. Under the amended ROD, the remaining work required at the Site
23 includes the diversion of Dolly Creek, along with the possible construction of the passive water
24 treatment system and diversion of Little Grizzly Creek. Implementation of that work is projected
25 to cost an estimated \$2.09 million. With the estimated cost of 30 years of operation and
26 maintenance of the remedial action, the future costs of work required by the amended ROD are
27 expected to total approximately \$3.3 million.

1 N. The Parties acknowledge that there are factual disputes with respect to the history
2 of the Site, the condition of the Site, the remediation efforts, costs incurred in connection with
3 the Site, and future remediation needs. Without admitting or denying the facts in dispute, the
4 Parties have agreed that it is in their best interests to resolve these disputes through this Consent
5 Decree.

6 O. The Parties recognize, and the Court by entering this Consent Decree finds, that
7 this Consent Decree has been negotiated by the Parties in good faith and implementation of this
8 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated
9 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public
10 interest.

11 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

12 **II. JURISDICTION**

13 1. This Court has jurisdiction over the subject matter of this action pursuant to
14 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9604, 9607, and 9613(b). This Court also has
15 personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree
16 and the underlying complaint, Settling Defendants waive all objections and defenses that they
17 may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not
18 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this
19 Consent Decree.

20 **III. PARTIES BOUND**

21 2. This Consent Decree applies to and is binding upon the United States and upon
22 Settling Defendants and their successors and assigns. Any change in ownership or corporate
23 status of Settling Defendants including, but not limited to, any transfer of assets or real or
24 personal property, shall in no way alter the Settling Defendants' responsibilities under this
25 Consent Decree.

26 **IV. DEFINITIONS**

27 3. Unless otherwise expressly provided herein, terms used in this Consent Decree
28 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the

1 meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are
2 used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the
3 following definitions shall apply:

4 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
5 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

6 "Consent Decree" shall mean this Consent Decree [and the appendix and other
7 attachments hereto]. In the event of conflict between this Consent Decree and any appendix, the
8 Consent Decree shall control.

9 "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq.

10 "Day" shall mean a calendar day. In computing any period of time under this Consent
11 Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall
12 run until the close of business of the next working day.

13 "DOJ" shall mean the United States Department of Justice and any of its successor
14 departments, agencies or instrumentalities.

15 "EPA" shall mean the United States Environmental Protection Agency and any of its
16 successor departments, agencies or instrumentalities.

17 "Escrow Account" shall mean the interest-bearing account established as a qualified
18 settlement fund pursuant to Internal Revenue Code of 1986 § 468B, as amended, and Treasury
19 Regulations promulgated thereunder.

20 "Escrow Agreement" is the instrument that establishes and governs the Escrow Account
21 and is attached as Appendix A.

22 "Forest Service" shall mean the United States Department of Agriculture, Forest Service,
23 and any of its successor departments, agencies or instrumentalities.

24 "Future Response Costs" shall mean all costs incurred, on or after the effective date of
25 this consent Decree, in connection with the performance of environmental Response Actions by
26 the United States or its designated contractor(s) at or in connection with the Site.
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28

1 “Interest” shall mean interest at the rate specified for interest on investments of the
2 Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the
3 U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

4 “Natural Resource Damages” shall mean damages or other relief for injury to, destruction
5 of, or loss of any and all Natural Resources, including the costs of assessing such injury,
6 destruction or loss, and including interest and litigation costs.

7 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral
8 or an upper case letter.

9 “Parties” shall mean the United States and Settling Defendants.

10 “Past Response Costs” shall mean all costs incurred prior to the effective date of this
11 Consent Decree, in connection with the performance of environmental Response Actions by the
12 United States or its designated contractor(s) at or in connection with the Site.

13 “Plaintiff” shall mean the United States of America.

14 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901
15 et seq. (also known as the Resource Conservation and Recovery Act).

16 “Response Action” shall mean remove, removal, remedy and remedial action, as those
17 terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601; all such terms (including the
18 terms “removal action” and “remedial action”) include enforcement activities related thereto.

19 “Response Costs” shall mean “Past Response Costs” and “Future Response Costs.”

20 “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

21 “Settling Defendants” shall mean defendant Atlantic Richfield Company and its affiliate
22 ARCO Environmental Remediation, L.L.C.

23 “Site” shall mean the Walker Mine Tailings Site, encompassing approximately 100 acres,
24 located in the Plumas National Forest in Plumas County.

25 “United States” shall mean the United States of America, together with all departments
26 and agencies thereof.

1 **V. PAYMENT OF FUTURE RESPONSE COSTS**

2 4. Within 30 business days after Settling Defendants receive notice that this Consent
3 Decree has been lodged, Settling Defendants shall deposit the amount of \$2.5 Million into an
4 escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank,
5 which Settling Defendants shall qualify as a qualified settlement fund ("QSF") pursuant to
6 Internal Revenue Code § 468B (the "Escrow Account"), in payment for Future Response Costs
7 to be incurred by the United States at or in connection with the Site. Notice that payment has
8 been made shall be made pursuant to Section XI of this Decree (Notices and Submissions) and
9 shall reference U.S. DOJ No. 90-11-2-1320 and the Forest Service Account number to be
10 provided by the Forest Service. Such monies shall be disbursed from the Escrow Account
11 pursuant to the terms of Section VI of this Decree. The Forest Service has approved the Escrow
12 Account as of the date that this Consent Decree is executed by a representative of the Forest
13 Service, subject, however, to the Forest Service's further review of such approval in accordance
14 with, and to the extent permitted by, Section XIV of this Consent Decree. The Escrow Account
15 also shall be subject to the continuing jurisdiction of the Forest Service in accordance with
16 Section VI of this Consent Decree. If this Decree is not entered by the District Court, and the
17 time for any appeal of that decision has run, or if the District Court's denial of entry is upheld on
18 appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to
19 Settling Defendants.

20 5. In the event that the payment required by the preceding Paragraph is not made as
21 required, Settling Defendants shall pay Interest on the amount owing. The Interest to be paid
22 under this Paragraph shall begin to accrue thirty (30) days after the date payment was to be made
23 and shall continue to accrue until payment is made. Payments of Interest made under this
24 Paragraph shall be in addition to such other remedies or sanctions available to the United States
25 by virtue of Settling Defendants' failure to make timely payments under this Section. Settling
26 Defendants shall make all payments required by this Paragraph in the manner described in the
27 preceding Paragraph. Any Interest payable under this Paragraph shall be paid into the Escrow
28 Account.

1 6. In addition to Interest, if payment of any portion of the amount due under this
2 Section is not made by the 30th day after the payment was due to be made, Settling Defendants
3 shall pay a stipulated penalty of \$1000 per day for each day the payment is late, until payment is
4 made in full. Payments to the United States under this Section shall be paid by certified or
5 cashier's check(s) made payable to "U.S. Department of Justice" and delivered to the office of
6 the United States Attorney, Eastern District of California, Financial Litigation Unit, 501 "I"
7 Street, Suite 10-100, Sacramento, California 95814, along with a transmittal notice indicating
8 that the payment is for stipulated penalties and referencing the Forest Service Account number
9 provided, U.S. DOJ No. 90-11-2-1320, and the name and address of the party making payment.
10 Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s),
11 shall be sent to the United States as provided in Section XI (Notices and Submissions).
12 Notwithstanding any other provision of this Section, the United States may, in its unreviewable
13 discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to
14 this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from
15 payment as required by this Section or from performance of any other requirements of this
16 Consent Decree.

18 **VI. DISBURSEMENTS FROM ESCROW ACCOUNT**

19 7. The amount deposited in the Escrow Account pursuant to Section V of this
20 Decree shall be disbursed, subject to the provisions of the following Paragraph, in accordance
21 with escrow instructions executed by the Parties and the bank in which the Escrow Account is
22 established. The Escrow Account shall be established prior to the lodging of this Decree,
23 pursuant to an Escrow Agreement in substantially the form set out in Appendix A to this Decree.

24 8. The Forest Service shall submit an application for payment of Future Response
25 Costs ("Application"), on a semi-annual or quarterly basis, to implement the CERCLA response
26 activities at the Site. Such Application shall include documentation identifying each cost (actual
27 or projected), including the amount incurred; the date incurred or to be incurred; the contractor or
28 vendor performing the response activity, if applicable; and the items or services purchased or to

1 be purchased, if applicable. In the case of intramural costs or activities, the Application shall
2 provide documentation sufficient to identify such costs or activities as being associated with Site
3 response actions. The Application shall be submitted to the Escrow Agent for the Escrow
4 Account, with a copy to Settling Defendants. Settling Defendants may, within 30 days of the
5 Application's submission, serve an objection to the Application on the Forest Service, with a
6 copy to the Escrow Agent, opposing the Application. Such an objection shall be limited to
7 opposing costs identified in the Application on the grounds that the costs requested in the
8 Application:

9 (1) were not incurred at the Site, or

10 (2) are not Future Response Costs within the definition set out in Section IV of this
11 Consent Decree.

12 9. The Forest Service may thereupon withdraw or modify the Application. If the
13 Forest Service submits a modified Application, Settling Defendants may treat it as an original
14 Application and may serve an objection within 30 days of the Application on the grounds
15 specified above. In the case of any Application as to which an objection is pending, the Escrow
16 Agent shall not make disbursement except in accordance with the following Paragraph. Any
17 pending objection to an Application shall be resolved by the Dispute Resolution provisions of
18 this Paragraph. If the Parties are unable to informally resolve the dispute within 15 days from
19 the date the pending objection was submitted, the Forest Service may make a motion to the Court
20 requesting that its application or modified application be approved. Settling Defendants may
21 oppose that motion, pursuant to the Local Rules of Court. In any such dispute brought to the
22 Court, Settling Defendants shall bear the burden of demonstrating that the costs requested in the
23 application: (1) were not incurred at the Site, or (2) are not Future Response Costs within the
24 definition set out in Section IV of this Consent Decree.

25 10. By agreement of the Parties, and after payment has been made pursuant to
26 Section V of this Decree, the escrow instructions governing disbursements from the Escrow
27 Account may be modified by written agreement between the Parties and the bank in which the
28 Escrow Account is established. Settling Defendants shall cooperate in the execution of such

documents as are necessary to effectuate such changes, provided that such changes do not affect the substantive rights of Settling Defendants with respect to the Escrow Account.

11. The Forest Service shall use the funds in the Escrow Account to properly implement the ROD and any amendments to the ROD required to remediate current conditions at the Site.

VII. COVENANTS NOT TO SUE BY THE UNITED STATES

12. In consideration of the payment, covenants and other promises made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 13 of this Section, the Forest Service covenants not to bring suit for any and all claims within the scope of its authority for Response Costs, Response Actions, or Natural Resources Damages at or to address the Site. The United States specifically covenants not to sue or to take administrative action for any of the following actions relating to the Site:

(1) injunctive relief, Response Actions, Response Costs, contribution, or other relief under Sections 106 (including, without limitation, claims for penalties under Section 106(b)), 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, or

(2) common law and/or other statutory claims based upon any alleged failure of Settling Defendants or their predecessors to pay Response Costs, Conduct Response Actions or remediate conditions at the Site, or

(3) any action under Section 7003 of RCRA, 42 U.S.C. § 6973.

Except as provided in Paragraph 13 of this Section, the covenants not to sue set forth in this Paragraph include both past and future liability for those claims enumerated above arising from or relating to all conditions at or in connection with the Site. These covenants not to sue extend to the Settling Defendants, and to each such entity's respective officers, directors, and employees acting in their capacities as such. These covenants not to sue also extend to Settling Defendants' parents, affiliates, successors and assigns, and to each such entity's respective officers, directors and employees acting in their capacities as such, but only to the extent their liability derives from Settling Defendants' potential liability and only to the extent such entities provide covenants not to sue identical to those provided by Settling Defendants pursuant to Section VIII of this Consent

1 Decree. These covenants not to sue shall take effect upon the payment in full of the amount due
2 under Section V of this Consent Decree (Payment of Future Response Costs), provided that
3 Settling Defendants remain in compliance with the terms of Section VI (Disbursements from
4 Escrow Account) of this Consent Decree until the Escrow Account is closed.

5 13. General reservations of rights. The covenants not to sue set forth above do not
6 pertain to any matters other than those expressly specified in Paragraph 12. The United States
7 reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants
8 with respect to all other matters, including, but not limited to, the following:

9 (1) claims based on a failure by Settling Defendants to meet a requirement of
10 this Consent Decree;

11 (2) criminal liability;

12 (3) liability for damages for injury to, destruction of, or loss of natural
13 resources, and for the costs of any natural resource damage assessments at the Site, on
14 behalf of a federal agency other than the Forest Service;

15 (4) liability based upon Settling Defendants' ownership or operation of the
16 Site after signature of this Consent Decree; and

17 (5) liability based upon Settling Defendants' transportation, treatment,
18 storage, or disposal of, or arrangement for the transportation, treatment, storage, or
19 disposal of, any hazardous substance or solid waste after signature of this Consent
20 Decree.

21 14. Notwithstanding any other provision of this Consent Decree, the United States
22 retains all authority and reserves all rights to take any and all Response Actions authorized by
23 law.

24 **VIII. COVENANTS BY SETTLING DEFENDANTS**

25 15. Except as specifically provided in Paragraph 17 of this Section, Settling
26 Defendants hereby covenant not to sue and agree not to assert any claims or causes of action
27 against the United States with respect to the Site, Response Costs as defined herein, or this
28 Consent Decree, including, but not limited to:

1 a. any direct or indirect claim for reimbursement from the Hazardous
2 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA,
3 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

4 b. any claim arising out of Response Actions at or in connection with the
5 Site, including any claim under the United States Constitution, the California State
6 Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act,
7 28 U.S.C. § 2412, as amended, or at common law; or

8 c. any claim against the United States pursuant to Sections 107 and 113 of
9 CERCLA, 42 U.S.C. §§ 9607 and 9613, in connection with the Site.

10 16. Nothing in this Consent Decree shall be deemed to constitute approval or
11 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or
12 40 C.F.R. 300.700(d).

13 17. General Reservation of Rights by Settling Defendants. The Settling Defendants
14 reserve any defenses to any order or claim brought by the United States pursuant to the
15 reservations contained in Paragraph 13. In addition, the Settling Defendants reserve any cross-
16 claims, counterclaims, or third-party claims against the United States in response to any claims
17 brought by the United States against the Settling Defendants pursuant to the reservations
18 contained in Paragraph 13.

19 **IX.EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

20 18. Nothing in this Consent Decree shall be construed to create any rights in, or grant
21 any cause of action to, any person not a Party to this Consent Decree. The preceding sentence
22 shall not be construed to waive or nullify any rights that any person not a signatory to this decree
23 may have under applicable law. Settling Defendants expressly reserve any and all rights
24 (including, but not limited to, any right to contribution), defenses, claims, demands, and causes
25 of action that it may have with respect to any matter, transaction, or occurrence relating in any
26 way to the Site against any person not a Party hereto.

27 19. The Parties agree, and by entering this Consent Decree this Court finds, that
28 Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection

1 from costs, damages, actions, or other claims (whether seeking contribution, indemnification, or
2 however denominated) for matters addressed in this Consent Decree as provided by
3 (1) CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and (2) any other applicable law. The
4 “matters addressed” in this Consent Decree are all Response Actions taken or to be taken and all
5 Response Costs incurred or to be incurred by the United States or any other person with respect
6 to the Site, and specifically include without limitation those matters governed by the covenants
7 contained in Sections VII and VIII of this Consent Decree. The “matters addressed” in this
8 Consent Decree shall not include those Response Costs or Response Actions as to which Plaintiff
9 has reserved its rights under this Consent Decree (except for claims for failure to comply with
10 this Consent Decree), in the event that Plaintiff asserts against Settling Defendants rights coming
11 within the scope of such reservations.

12 20. Settling Defendants agree that, with respect to any suit or claim for contribution
13 brought by them for matters related to this Consent Decree, Settling Defendants will notify the
14 United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

15 21. Settling Defendants also agree that, with respect to any suit or claim for
16 contribution brought against them for matters related to this Consent Decree, Settling
17 Defendants will notify the United States in writing within ten (10) days of service of the
18 complaint on Settling Defendants. In addition, Settling Defendants shall notify the United States
19 within ten (10) days of service or receipt of any motion for summary judgment and within
20 ten (10) days of receipt of any order from a court setting a case for trial.

21 22. In any subsequent administrative or judicial proceeding initiated by the United
22 States for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the
23 Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon
24 the principles of waiver, res judicata, collateral estoppel, issue or claim preclusion, claim
25 splitting, or any other defenses based upon any contention that the claims raised by the United
26 States in the subsequent proceeding were or should have been brought in the instant case;
27 provided, however, that nothing in this Paragraph affects the enforceability of the covenants not
28 to sue set forth in Section VII (Covenants Not to Sue by the United States).

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X. CERTIFICATION

23. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all Forest Service requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e).

XI. NOTICES AND SUBMISSIONS

24. Unless otherwise specified in this Consent Decree, whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and Settling Defendants.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
6 Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-1320

1 David B. Glazer
2 Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 301 Howard Street, Suite 1050
6 San Francisco, California 94105

7 and

8 Rose Miksovsky
9 Office of the General Counsel
10 33 New Montgomery Street, 17th Floor
11 San Francisco, California 94105

12 As to the Forest Service:

13 Dennis Geiser
14 Regional Environmental Engineer
15 Forest Service, Pacific Southwest Region
16 1323 Club Drive
17 Vallejo, California 94592

18 As to Settling Defendants:

19 Jean A. Martin
20 Environmental Counsel
21 Atlantic Richfield Company
22 6 Centerpointe Drive, 5th Floor
23 La Palma, CA 90623

24 Michael J. Gallagher
25 Davis Graham & Stubbs LLP
26 1550 Seventeenth Street, Suite 500
27 Denver, CO 80202

28 Robin J. Bullock
Regional Manager
Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701

Mark Brekhus
Regional Manager
Atlantic Richfield Company
6 Centerpointe Drive, 1st Floor
La Palma, CA 90623

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XIII. RETENTION OF JURISDICTION

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

XV. SIGNATORIES/SERVICE

31. Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and

1 any applicable local rules of this Court, including, but not limited to, service of a summons. The
2 Parties agree that Settling Defendants need not file an answer to the Complaint in this Action
3 unless or until thirty days after the Court expressly declines to enter this Consent Decree.
4

5 **XVI. FINAL JUDGMENT**

6 32. Upon approval and entry of this Consent Decree by the Court, this Consent
7 Decree shall constitute the final judgment between and among the United States and the Settling
8 Defendants, and among other things, resolves all claims filed in the above-captioned cases
9 between and among those Parties. The Court finds that there is no just reason for delay and
10 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58

11 33. Retaining Jurisdiction. The Court shall retain jurisdiction over this case, until
12 termination of this Consent Decree, to resolve disputes arising under the Consent Decree, enter
13 orders modifying the Consent Decree, and effectuate and enforce compliance with the terms of
14 the Consent Decree.

15 SO ORDERED THIS _____ DAY OF _____, 2004.

16
17 _____
18 United States District Judge
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28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v
2 ATLANTIC RICHFIELD COMPANY, relating to the Walker Mine Tailings Site.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 _____
7 THOMAS L. SANSONETTI
8 Assistant Attorney General
9 Environment and Natural Resources
10 Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13 _____
14 DAVID S. GLAZER
15 Environmental Enforcement Section
16 Environment and Natural Resources
17 Division
18 U.S. Department of Justice
19 301 Howard Street, Suite 1050
20 San Francisco, California 94105

21 _____
22 JACK BLACKWELL
23 Regional Forester
24 U.S. Department of Agriculture
25 Forest Service
26 1323 Club Drive
27 Vallejo, California 94592
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.
2 ATLANTIC RICHFIELD COMPANY, relating to the Walker Mine Tailings Site.

3 FOR THE ATLANTIC RICHFIELD
4 COMPANY AND ARCO
5 ENVIRONMENTAL REMEDIATION, L.L.C.

6 Date: _____

7 _____
8 Luke Keller
9 President of Operations, The Americas
10 Atlantic Richfield Company
11 21800 Torch Parkway
12 Warrenville, IL 60555

13 _____
14 Jean A. Martin
15 Environmental Counsel
16 Atlantic Richfield Company
17 6 Centerpointe Drive
18 5th Floor
19 Palma, CA 90623

20 _____
21 Michael A. Gallagher
22 Davis Graham & Stubbs LLP
23 1550 Seventeenth Street
24 Suite 500
25 Denver, CO 80202

26 Agent Authorized to Accept Service of Complaint, Consent Decree and pleadings and
27 orders related to entry of the Consent Decree on Behalf of Above-signed Parties:

28 Name: Jean Martin
Title: Environmental Counsel
Address: 6 Centerpointe Drive, LPC 6-557
Tel. Number:

APPENDIX A

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WALKER MINE ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement") dated as of the effective date (the "Effective Date") set forth on schedule 1 attached hereto ("Schedule 1") by and among Atlantic Richfield Company (the "Company") and the United States Department of Agriculture, Forest Service (the "Forest Service") (collectively, the "Parties"), the administrator identified on Schedule 1 (the "Administrator"), and JPMorgan Chase Bank, N.A. as escrow agent hereunder (the "Escrow Agent").

WHEREAS, the Parties entered into a Consent Decree ("Consent Decree") to resolve alleged liability for remediation of the Walker Mine Tailings Site located in the Plumas National Forest, Plumas County, California ("Site").

WHEREAS, pursuant to the Consent Decree, the Company has agreed to make certain contributions to a settlement fund to be held in escrow pending its release in accordance with the Consent Decree.

WHEREAS, the Parties and the Escrow Agent now desire to enter into this Escrow Agreement to provide for and to evidence their mutual agreement with respect to the holding and maintenance of the settlement fund in escrow.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Appointment.** The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment under the terms and conditions set forth herein.

2. **Settlement Fund.** The Company shall pay to the Escrow Agent for deposit the amount described in the Consent Decree. The Escrow Agent has the right to assume that any deposit received by it pursuant to the terms of this Escrow Agreement is proper and shall not be required to inquire into the adequacy, sufficiency or propriety of any such deposit. The Escrow Agent shall have no duty to solicit any deposits that may be due to it under the terms of this Escrow Agreement or the Settlement Agreement. All deposits received pursuant to this Section 2 shall hereinafter be referred to as the "Escrow Deposit." The Escrow Agent shall hold the Escrow Deposit and, subject to the terms and conditions hereof, shall invest and reinvest the Escrow Deposit and the proceeds thereof (the "Settlement Fund") as directed in Section 3.

3. **Investment of Settlement Fund.** During the term of this Escrow Agreement, the Settlement Fund shall be invested and reinvested by the Escrow Agent in the investment indicated on Schedule 1 or such other investments as shall be directed in writing by the Parties and as shall be acceptable to the Escrow Agent. Following the Escrow Deposit, the Escrow Agent will invest these Settlement Fund in investments limited to the following;

a. Obligations issued or granted by the United States, or any money fund which invests solely in the foregoing obligations;

b. Any obligations issued or guaranteed by any state or municipality in the United States that is rated AAA by Standard & Poor's, or Aaa by Moody's Investors Service, at the time of investment;

c. Any corporate bonds with an investment grade credit rating of AAA by Standard & Poor's, or Aaa by Moody's Investors Service, at the time of the investment;

d. Certificates of deposit of, accounts with repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000; and

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e. Certificates of deposit of, accounts with, or other obligations of any bank or corporation endowed with trust powers provided that the full amount of any such certificate of deposit, account, or other obligations is insured by FDIC or FSLIC.

The Settlement Fund shall not be invested in any other manner without the prior written instruction of the Forest Service. All investment orders involving U.S. Treasury obligations, commercial paper and other direct investments will be executed through JPMorgan Fleming Asset Management (JPMFAM), in the investment management division of JPMorgan Chase. Subject to principles of best execution, transactions are effected on behalf of the Settlement Fund through broker-dealers selected by JPMFAM. In this regard, JPMFAM seeks to attain the best overall result for the Settlement Fund, taking into consideration quality of service and reliability. An agency fee will be assessed in connection with each transaction. Periodic statements will be provided to the Parties and the Administrator reflecting transactions executed on behalf of the Settlement Fund. The Parties and the Administrator, upon written request, will receive a statement of transaction details upon completion of any securities transaction in the Settlement Fund without any additional cost. The Escrow Agent shall have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment in an investment indicated on Schedule 1 or any investment made pursuant to the instructions of the parties hereto or as a result of any liquidation of any investment prior to its maturity or for the failure of the parties to give the Escrow Agent instructions to invest or reinvest the Settlement Fund.

4. **Settlement Fund Separate.** The Escrow Agent shall at all times hold the Settlement Fund wholly segregated from all other funds and securities deposited with or held by the Escrow Agent. The Escrow Agent shall not commingle the Settlement Fund with any other assets of the Escrow Agent. The Escrow Agent shall hold and dispose of the Settlement Fund only as set forth herein. The Settlement Fund shall always be maintained by the Escrow Agent in accordance with the terms of this Escrow Agreement and the Settlement Fund shall at all times be maintained on the books of the Escrow Agent as a special account evidencing such facts. The Escrow Deposit received by the Escrow Agent under this Escrow Agreement shall not be considered as a banking deposit or be subject to checks or drafts drawn by the Parties, and the Escrow Agent shall have no right or title with respect to the Settlement Fund except as Escrow Agent under the terms hereof. The Escrow Agent shall neither make nor permit any disbursement from the Settlement Fund except as directed in writing and as expressly provided herein.

5. **Title to Settlement Fund.** Prior to the termination of this Escrow Agreement, the Company shall not have legal title to the Settlement Fund. Title to the Settlement Fund shall be held by the Escrow Agent in its capacity as such.

6. **Distribution of Settlement Fund.** The Settlement Fund shall be distributed to the Forest Service in accordance with this Escrow Agreement. The Escrow Agent shall disburse the Settlement Fund semi-annually or quarterly, as applicable, upon application of the Forest Service made pursuant to the Disbursement Request Application ("Attachment 1"), for the purpose of paying the Forest Service for future Response Costs, as defined in the Consent Decree. The Forest Service representative with authority to make such application shall be the Forest Service Pacific Southwest Region's Regional Engineer ("Regional Engineer"). The Escrow Agent shall make the requested disbursement 30 days after receipt of such Disbursement Request Application, unless the Company submits an Objection to the Disbursement Request Application ("Attachment 2") within such 30 day period. If, upon the Company's objection made pursuant to this Section, the Forest Service withdraws its Disbursement Request Application, the Escrow Agent shall make no disbursement; if the Forest Service modifies its Disbursement Request Application (and the Company does not object to the modified Disbursement Request Application within 30 days of its resubmission), the Escrow Agent shall make disbursement as requested by the modified Disbursement Request Application. If any objection remains pending as to a Disbursement Request Application or modified application, the Escrow Agent shall make disbursement only in accordance with a judicial determination. If funds remain in the Settlement Fund after all Future Response Costs have been reimbursed, the Settlement Fund shall be disbursed to the Company. If one or both of the Parties elect to terminate the Consent Decree pursuant to Section 28 of the Consent Decree, then all funds in the Settlement Fund shall be promptly returned to the Company. If the United States elects to withdraw its consent to the Consent Decree pursuant to Section 27 of the Consent Decree, then all funds in the Settlement Fund shall be promptly returned to the Company. At any point when the Settlement Fund is only sufficient to pay fees and taxes on interest accruals, the Escrow Account shall be closed after payment of such fees and taxes.

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7. **Termination.** After receipt of notice from the Escrow Agent that all claims have been paid and disbursement in full of the Settlement Fund pursuant to the provisions of Section 6 hereof, this Escrow Agreement shall terminate, subject, however, to the provisions of Section 13. Upon the taking of all actions as described by this Escrow Agreement, the Escrow Agent shall have no further obligations or responsibilities hereunder to the parties hereto or to any other person or persons in connection with this Escrow Agreement. The Escrow Agent may dispose of any records or reports concerning the Settlement Fund and any transactions relating to such account in accordance with the Escrow Agent's established procedures, but only upon 30 days prior written notice to the Parties and the Administrator.

8. **Escrow Agent.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Escrow Agreement. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Settlement Fund. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to the Parties or the Administrator. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction. Anything in this Escrow Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

9. **Removal or Resignation of Escrow Agent.** The Escrow Agent may resign without obtaining the order of any court, by giving at least 30 days' prior written notice (unless waived) to the Parties and the Administrator. The Parties may remove the Escrow Agent only with the consent of each other at any time for any reason or for no reason by giving written notice thereof to the Escrow Agent at least 10 days prior to the date specified for such removal to take effect. If either of the Parties wishes to remove the Escrow Agent for good cause, it shall notify the other in writing of the reasons for such proposed removal, whereupon consent to such removal shall not be unreasonably withheld. On or before the effective date specified for resignation or removal of the Escrow Agent, the Parties shall appoint a successor Escrow Agent by a written instrument. The Company shall be deemed to have consented to such removal and appointment if the party receiving the notice fails to object to the removal or appointment within 5 days after having received notice from the other of its intent to replace the Escrow Agent. Such resignation or removal shall be effective upon the appointment of a successor Escrow Agent pursuant to the provisions hereof. Any successor Escrow Agent shall be a bank domiciled in the United States of America and having combined capital and surplus of at least \$500,000,000. Any successor Escrow Agent appointed under the provisions of this Escrow Agreement shall have all of the same obligations, rights, powers, privileges, immunities and authority with respect to the matters contemplated herein as are granted herein to the original Escrow Agent. Upon the effective date of any resignation or removal of an Escrow Agent, all fees and expenses owed to the retiring Escrow Agent shall be paid from the Settlement Fund and the Settlement Fund shall be delivered by the retiring Escrow Agent to the successor Escrow Agent, whereupon all of the retiring Escrow Agent's obligations hereunder shall cease and terminate. The indemnities contained herein in favor of the retiring Escrow Agent, its officers, directors and employees (or any of them) shall survive with respect to events or circumstances occurring prior to such resignation or removal.

10. **Merger.** Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated or any corporation or association to which all or substantially all the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

11. **Fees.** The Parties agree jointly and severally to (i) pay the Escrow Agent upon execution of this Escrow Agreement and from time to time thereafter reasonable compensation for the services to be rendered hereunder, which unless otherwise agreed in writing shall be as described in Schedule 1 attached hereto, and (ii) pay or reimburse the Escrow Agent upon request for all expenses, disbursements and advances, including reasonable attorney's fees and expenses, incurred or made by it in connection with the preparation, execution, performance, delivery, modification and termination of this Escrow Agreement. Such compensation shall be billed to the Parties and shall be paid from amounts on deposit in the Settlement Fund. For services other than those described in the fee schedule, and as to which the parties have not agreed, the Escrow Agent shall be entitled to such compensation as may be allowed by the court.

12. **Records and Reports.** The Escrow Agent will keep books of record and account in which complete entries shall be made of all transactions relating to the receipts, disbursements and investment of the Settlement Fund, and such books shall be available for inspection at reasonable hours and under reasonable conditions by the parties hereto.

13. **Indemnity.** The Company shall defend and indemnify, and the Parties shall jointly and severally hold harmless, the Escrow Agent and its directors, officers, agents and employees (the "indemnitees") from all loss, liability or expense (including the fees and expenses of in house or outside counsel) arising out of or in connection with (i) the Escrow Agent's execution and performance of this Escrow Agreement, except in the case of any indemnitee to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of such indemnitee, or (ii) its following any instructions or other directions from the Parties, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Escrow Agreement. The parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in the Settlement Fund for the payment of any claim for indemnification, compensation, expenses and amounts due hereunder.

14. **Attachment of Settlement Fund.** It is the intent of the Parties that the Settlement Fund not be subject to attachment, garnishment or levy by creditors of the Company. However, if the Settlement Fund is at any time attached, garnished or levied upon or under any court order, or in case the payment or transfer of the Settlement Fund shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting the Settlement Fund or a portion thereof, then in any of such events the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree that it is advised by legal counsel of its own choosing as binding upon it under the terms of this Escrow Agreement or otherwise. To the extent practicable, the Escrow Agent shall provide the Parties and the Administrator prompt notice of any such court order prior to taking any action thereon. If the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to the other parties to this Escrow Agreement or to any other person by reason of such compliance, even though such order, writ, judgment or decree may subsequently be reversed, modified, annulled, set aside or vacated.

15. **Taxes.** The Settlement Fund is to be treated for federal income tax purposes as a qualified settlement fund within the meaning of U.S. Department of Treasury ("Treas.") Reg. § 1.468B-1. The Administrator shall be the "administrator" (as that term is used in Treas. Reg. § 1.468B-2(k)(3)) of the Settlement Fund and as such will file such federal, state or local returns, pay such federal, state or local taxes, comply with applicable federal, state or local information reporting requirements and otherwise generally comply with the rules and regulations applicable to qualified settlement funds under Treas. Reg. § 1.468B-1 and relevant provisions of state and local tax law. The Administrator is explicitly authorized to use the assets of the Settlement Fund (i) to satisfy such federal, state and local taxes as may be due with respect to the Settlement Fund and (ii) to reduce the amount of any payments under this Escrow Agreement by taxes paid or which the Administrator reasonably concludes may become payable. The Company will comply with the provisions of the U.S. Department of Treasury Regulations applicable to the

transferor to a qualified settlement fund and the Administrator will comply with its duties and obligations under the Reg. §1.468B rules.

The Administrator, and, as required, the Company, shall jointly and timely make (or cause to be jointly and timely made) the "relation-back election" (as defined in Treas. Reg. § 1.468-1B) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations (or any successor regulations). It shall be the responsibility of the Administrator to timely and properly prepare, and deliver the necessary documentation (including but not limited to the disclosures and elections referred to above) for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

The parties hereto acknowledge that the Administrator shall not be held accountable for any fines, penalties or interest associated with late filings as a result of the failure or refusal of others to cooperate with the Administrator causing such filings to occur on a timely basis. The Administrator may retain or hire a qualified third party or parties ("Qualified Third Party") to perform any of its duties or responsibilities specified herein or in Treas. Reg. § 1-468B-2. The fees or costs of such Qualified Third Party shall be billed to the Administrator and shall be paid from amounts on deposit in the Settlement Fund in accordance with the provisions of Section 11 hereof.

The Escrow Agent shall have no duty to comply with the provisions of Treasury Reg. § 1.468B, cited above. Furthermore, the Escrow Agent shall not be deemed to have any knowledge or responsibility concerning the applicability of such regulation to the transactions contemplated by this Agreement.

16. **Notices.** All communications hereunder shall be deemed to be duly given and received:
- (i) upon delivery if delivered personally or upon confirmed transmittal if by facsimile;
 - (ii) on the next Business Day (as hereinafter defined) if sent by overnight courier; or
 - (iii) four (4) Business Days after mailing if mailed by prepaid registered mail, return receipt requested, to the appropriate notice address set forth on Schedule 1 or at such other address as any party hereto may have furnished to the other parties in writing by registered mail, return receipt requested.

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to (ii) and (iii) of this Section 16, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate. "Business Day" shall mean any day other than a Saturday, Sunday or other day on which the Escrow Agent located at the notice address set forth on Schedule 1 is authorized or required by law or executive order to remain closed.

17. **Security Procedures.** In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on schedule 2 hereto ("Schedule 2"), and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Parties or the Administrator to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any of the escrowed funds for any payment order it executes using any such identifying number, even where its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Escrow Agreement acknowledge that these security procedures are commercially reasonable.

18. **Miscellaneous.** The provisions of this Escrow Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Escrow Agreement nor any right or interest hereunder may be assigned in whole or in part by any party, except as provided in Sections 9 and 10, without the prior consent of the other parties. This Escrow Agreement shall be governed by and construed under the laws of the State of California. The Company irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds, and waives any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Escrow Agreement. The Parties irrevocably consent

to service of process by mail or in any other manner permitted by applicable law, except that service of process on the United States shall be effected in accordance with applicable law. The Parties other than the United States consent to the jurisdiction of the courts located in the State of California; jurisdiction over the United States shall be governed by applicable law. No party to this Escrow Agreement is liable to any other party for losses due to, or if it is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, floods, strikes, equipment or transmission failure, or other causes reasonably beyond its control. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date set forth in Schedule 1.

JPMORGAN CHASE BANK, N.A.
as Escrow Agent

By: _____

ATLANTIC RICHFIELD COMPANY

By: _____

EHRHARDT KEEFE STEINER & HOTTMAN
as Administrator

By: _____

UNITED STATES
DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By: _____

Schedule 1

Effective Date:

Name of Company: Atlantic Richfield Company
Company Notice Address: 6 Centerpointe Drive, 5th Floor, Palma, CA 90623

Name of Administrator: Ehrhardt Keefe Steiner & Hottman
Administrator Notice Address: 7979 E. Tufts Avenue, Suite 400 · Denver, Colorado 80237-2843

Name: United States Dept of Agriculture, Forest Service, Pacific Southwest Region
Notice Address: 1323 Club Drive, Vallejo, California 94592

Investment: [specify]

- ☐ Obligations issued or granted by the United States, or any money fund which invests solely in the foregoing obligations;
- ☐ Any obligations issued or guaranteed by any state or municipality in the United States that is rated AAA by Standard & Poor's, or Aaa by Moody's Investors Service, at the time of investment;
- ☐ Any corporate bonds with an investment grade credit rating of AAA by Standard & Poor's, or Aaa by Moody's Investors Service, at the time of the investment;
- ☐ Certificates of deposit of, accounts with repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000; and
- ☐ Certificates of deposit of, accounts with, or other obligations of any bank or corporation endowed with trust powers provided that the full amount of any such certificate of deposit, account, or other obligations is insured by FDIC or FSLIC.

The Funds shall not be invested in any other manner without the prior written instruction of the Forest Service. Absence of any written instructions, the Funds shall be invested in a Trust Account with the JPMorgan Chase Bank, N.A.

Escrow Agent notice address: JPMorgan Chase Bank
Institutional Trust Services
4 New York Plaza – 21st Floor
NY, NY 10004
Attention: Sandra Frierson
Fax No.: 212.623.6168

Escrow Agent's compensation: \$5,000 per annum without pro-ration for partial years.

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Schedule 2

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions**

If to the Company:

<u>Name</u>	<u>Telephone Number</u>
1. Jean A. Martin	(714) 228-
2. Robert Chetwood	(714) 228-
3. Dave McCarthy	(406) 782-

If to the Forest Service:

<u>Name</u>	<u>Telephone Number</u>
1. _____	_____
2. _____	_____
3. _____	_____

Telephone call-backs shall be made to each appropriate party if more than one party's instructions are required pursuant to this Escrow Agreement.

Attachment 1

Disbursement Request Application

Application Date: _____

Check One:

☐ Original Application

☐ Modified Application. Original Application Date: _____

Application Quarter: _____

Applicant: _____

Summary of Response Costs Incurred or to be Incurred¹:

Response Activity	Cost Incurred or to be Incurred	Date of Activity	Service / Item Purchased or to be Purchased	Contractor / Consultant / Vendor

¹ Documentation of the costs incurred or to be incurred for each activity is attached.

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Attachment 2

Objection to Request for Disbursement

Original Application Date: _____

Application Quarter: _____

Original Applicant: _____

Settling Defendants object to the following Response Costs:

Response Activity or Service / Item	Cost Incurred or to be Incurred	Date of Activity	Contractor / Consultant / Vendor	Objection
				<input type="checkbox"/> costs not incurred at Site <input type="checkbox"/> costs are not Future Response Costs
				<input type="checkbox"/> costs not incurred at Site <input type="checkbox"/> costs are not Future Response Costs
				<input type="checkbox"/> costs not incurred at Site <input type="checkbox"/> costs are not Future Response Costs
				<input type="checkbox"/> costs not incurred at Site <input type="checkbox"/> costs are not Future Response Costs